Working Notes Issue 35:
The Claims Industry and the Public Interest

The Claims Industry and the Public Interest

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Introduction

Processing personal injury claims is big business. In the Dublin Area Yellow Pages for 1998/9, 44 pages of advertising are devoted to solicitors (as against 33 pages to computing-related services, 24 to building services, and 9 to auctioneers, estate agents and valuers). In the \'solicitors\' section there are 23 full-page advertisements costing between £10,000 to £16,000 each The total cost of the advertisements in this section is about £500,000. The content of these advertisements is dominated by the item of personal injury claims. Bold headings proclaim "Personal Injury Law is Our Business", "No-Win No-Fee" etc.

Much of the analysis of the so-called \'compo culture\' has focused on four factors:

- the willingness of some members of the legal profession to exploit the personal claims system and create a tidy living for themselves.
- the tendency in Irish courts to award very generous damages;
- the increasing tendency of the Irish to sue their fellow citizens;
- the role of the insurance companies.

The Role of Solicitors

The data above speaks for itself. More disturbing are reports of solicitors taking a proactive role in triggering claims (\'ambulance-chasing\'). Recently a man who was raised in an orphanage received a letter from a solicitor he had never heard of asking if he had been well treated in the orphanage and whether he was interested in making a claim. Solicitors have also canvassed army barracks in relation to possible deafness claims.

Since it costs about £10,000 to mount a defence in the High Court, there is little to be lost by solicitors and their clients in \'having a go\' in the hope that the insurers will settle rather than incur legal expenses and still risk losing the case. The \'no win, no fee\' arrangement risks reducing the pursuit of a claim to the level of a transaction more suited to a betting shop.

Damages

Irish injury awards are high. Ireland had the highest average personal injury damages of the 12 EU countries The average award in workplace claims is £5260 in Britain, but £13,116 in Ireland. For

every £100 that an Irish employer pays in public liability premiums, his British counterpart will pay only £34 and his Dutch counterpart £14. The average Irish motor accident award, at £4500, is over four times the UK average (Note 2).

Frequency of Claim

Independent surveys have revealed that personal injury claims are more frequent in Ireland than in other European countries. Irish workers are twice as likely to claim for injury as workers in Britain (Note 3).

The statement frequently made by the legal profession that the problem in Ireland is not a \'compo culture\', but a \'negligence culture\' does not stand up. Ireland has the lowest workplace accident rate in Europe, less than half that of the U.K., for instance (Note 4).

Insurance Companies

The role of insurance companies in the development of the compensation culture is crucial because (in the majority of cases that do not involve the Government as defendant) insurance companies both pay for damages and have become major administrators of the system. In very few injury claims do the individual(s) guilty of negligence pay out of their own pocket. In many cases the solicitor representing the injured party will never speak to the negligent person apart from ascertaining the names of their insurance company, and will address their claim to that company. The insurers will decide to admit liability or not, whether to settle, (even against the wishes of the person alleged to cause the injury), and how much to offer. These decisions are based almost exclusively on commercial reasons and have been privately criticised by some judges.

Insurance companies are among those who gain from the compensation culture or at least their agents and employees do, since they earn more commission as people are compelled to pay more for insurance. Commission paid to insurance employees and agents under the headings of motor and liability insurance in Ireland amounts to almost £4m. per annum. In the longer run insurance companies profits tend to benefit also.

The Public Pays

The public pays in several ways for the claims industry. Firstly they pay high premiums for motor insurance and sometimes for public liability. Companies pay high premiums for employer and public liability, and pass this cost on to customers in higher prices. Claims paid out by the government or by local authorities are paid for by citizens and businesses through rates and taxes. Individuals who are sued may pay more heavily than others through loss of no-claims bonus or higher premiums. In every way it is ultimately the public who pays.

Reform of the System

Many groups are now beginning to urge reform of the system. Public authorities, central government, and business interest now feel that costs are out of control. Money is not the only

consideration. Many feel that the scope of the \'duty of care\' continues to be stretched to an unreasonable degree.

The problem is not confined to Ireland. In the United States, where punitive damages are prodigious, there are now major moves afoot to curb what is seen as \'lawsuit abuse\', under the banner of \'tort reform\'. A number of lobby groups have sprung up. Business people are concerned that investment will move to places that offer more protection from unpredictable verdicts. (Note 5)

In this article we seek particularly to highlight the key role played by the Judiciary in the process, and to ask whether the framework within which they make decisions could be modified. We explore what role the judges could play in checking a system which is acknowledged to be running out of control and threatening the common good.

The Role of the Judges

In the assessment of what compensation, if any, is to be paid, two considerations come into play. Firstly the amount of damages paid in cases is important. Equally important is the system for establishing whether damages are to be awarded at all.

The role of the judiciary in these two elements is crucial. They decide how much will be paid in damages in every case that is heard in court. However, even in cases that are settled outside of court, the parties involved, namely the lawyers and the insurance companies, will have previous judgements in mind as they negotiate. The decision to settle or go to court is based on a gamble by one or other of the legal teams that the case is similar to previously decided cases. The skill of lawyers is often to match the unique current case with already decided cases, and gamble that the sum of damages would be similar. So judges either directly or indirectly fix the level of damages in the personal injuries industry.

However, not only do judges decide how much will be paid. They also decide in what circumstances an injured person will receive damages. Through the rules they have developed, they define the concept of the \'duty of care\'. In other words they establish the acts and omissions that are to be considered negligent, and who is liable to pay compensation.

Apart from the actual occurrence of accidents, the establishment of liability and of the level of damages are the two driving forces that propel the entire system. Apart from the few areas where legislation has intervened, these are the exclusive remit of the judges.

Thus judges bear a considerable burden of responsibility regarding the public funds that they distribute. In practice, the money that we all pay to fund the claims industry is levied by the authority of the judges. In some ways this is an odd situation, because the judges are not accountable to us, and we cannot be sure whether the level of the \'tax\' we pay to fund claims will not increase indefinitely.

The Case for Compensation Awards

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Unquestionably a strong case can be made for having an efficient and generous system of compensation awards where each case is decided on its own merits. As Justice O\'Flaherty wrote in 1993 (Note 7).

The personal injury compensation system recognises the premium which a democratic society places upon the citizen\'s interest in the recognition, and protection, of his right to bodily integrity.

Another High Court Justice writes:

Where...a plaintiff has suffered a significant degree of permanent disablement, his/her monetary loss by way of special damages may be very substantial indeed depending on a number of factors including age, nature and extent of disablement, occupation, past and future loss of earnings, cost of adapting an existing dwelling to accommodate disablement or providing a new one where that is not possible; the ongoing cost of a minder; cost of past and future medical care including hospitalisation or institutional care; the ongoing cost of appliances such as wheelchairs and special motor transport where appropriate. (Note 8)

Another \'plus\' side of the claims culture is that people are more aware of their rights and are much less likely to meekly accept an injury caused by the carelessness of someone else, such as a slip on a spillage that a shop owner has neglected to mop up. The \'claims culture\' has also contributed to a greater \'culture of safety\' and made business people, householders and those in the caring professions more aware of the possibility of injuring someone through negligence. Social Solidarity Damaged by the Claims Culture

With all the benefits of the compensation \'system\', the high incidence and cost of claims is in other ways having a damaging effect on Irish society. We have already indicated the corrosive effect of the \'claims culture\' on the legal profession. Ordinary people however have become very conscious of the possibility of claims being made against them, or of making claims themselves. It has become a subject of casual comment and \'jokes\' in pubs, houses, shops and so on. Far from being a joke, the \'claims culture\' represents a serious breakdown in social solidarity, where in many situations people are slow to trust one another or even to help one another out for fear of being sued. For instance teachers in schools are under instructions from their unions not even to put a sticking plaster on an injured child\'s finger, following a case where a teacher was sued because a finger injury he had attended to became infected. People are frequently afraid to look after other people\'s children, to allow anyone to enter their home or property, to give someone a lift in a car, to loan someone a piece of equipment, to organise a routine community activity such as a clean-up or a children\'s outing, to write a reference, to allow people to earn a little money by doing odd jobs for them, or even to give advice to someone. G.P.s refer more and more routine cases to casualty or X-ray departments for fear of negligence claims against them, a practice which is increasingly clogging up accident departments in hospitals. In the U.S.A. this is described as \'defensive medicine\' and it is reckoned that about $1bn. a year is spend on unnecessary X-rays (which in turn gives rise to litigation!).

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In ordinary financial terms, the cost of claims is considerable. Most insured people are net losers since all pay premiums but few benefit from a large award during their lifetime. In 1997 the cost of claims under the headings of \'motor\' and \'liability\' amounted to about £5 a week for every man, woman and child in the State (see Note 6). This excludes claims paid for by the state out of taxation. Of course insurance brings \'peace of mind\', but in Ireland this is more expensive than anywhere else in Europe. One judge commented to Working Notes that "Those who have to bear the biggest burden in relation to awards are the State and the insurance industry. The insurance industry, I think is well able to look after itself." This is to ignore the fact however that it is the ordinary public who ultimately bear the cost of claims through the premiums they pay. Most non-life insurance companies make profits only from investments and not on their underwriting activities. In 1997 Irish companies paid out £1.2 billion in claims and made a net underwriting loss of £184m (Note 9).

Voluntary organisations in disadvantaged areas are particularly hampered in their efforts to organise diversionary activities for young people through inability to afford, or even to get, insurance cover. Local authorities are also a target for compensation claims, with the result that they cut back on \'nonessential\' items such as children\'s playgrounds. Where they do build them they are sometimes unable to open them because of the prohibitive cost of insurance. There seems to to be an assumption in the courts that local authorities have an army of inspectors and workers repairing footpaths, sweeping glass off playgrounds and so on. Local authorities have been the victims of some strange decisions, such as an award of £12,000 to a man who cycled through a warning tape while drunk. The judge in the case suggested that Local Authorities owed a duty of care to the people who could not take care of themselves. (Note 10).

While the system has encouraged greater responsibility on the part of some groups, it has ironically lead to a sense of diminished responsibility among certain individuals. In fact, many court decisions seem to impose an extraordinary \'duty of care\' on unsuspecting people, while appearing to expect remarkably little personal responsibility from people for (some of) their own misfortunes. As Michael McDowell S.C. asked at an IBEC Seminar:

Have we, by a huge self deception, created a system of compensation based on wholly unreal and artificial duties of care by which none of us expect to abide privately? (Note 11)

Legal people will argue that much of the fear of being sued is exaggerated, and that judges are not unreasonable. Nevertheless it only takes one well-publicised case, even one settled out of court, to make people nervous in similar situations.

The compensation system has fostered not only a climate of distrust, but also one of dishonesty and opportunism. For many people incurring some minor personal injury as a result of alleged negligence of others, the primary focus is not the healing of the injury or the securing of medical or other expenses associated with it, but the possibility of cashing in on a claim. Claims are made for the kind of injuries that would be routinely incurred in the course of any vigorous ball game or mountain hike (bruising, cuts and so on). The claims industry has become a kind of Lotto, with

people who have been able to make a personal injury claim for a minor injury regarded as \'lucky\', rather than \'unlucky\'. Many claims are opportunistic, if not actually vindictive.

The judges themselves have become increasingly concerned with the incidence of compensation claims. One judge writes:

I think there is some validity in the perception that people are becoming more litigious and that there is a danger of an excessive compensation culture developing. For instance, medical negligence actions would seem to be on the increase.

Another writes:

There is a temptation to regard the State as a bottomless well and this requires to be addressed, I think.

The Wider Issue: the Lack of a Fail-Safe Mechanism

A runaway claims culture opens up various \'appalling vistas\', ranging from the creation of a low-trust litigious society, to increases in taxes to pay for claims and to a flight of investment. These should give the ordinary citizens cause for worry, not so much on account of the \'vistas\' themselves, but because nobody or no group in society seems to have the power to do anything about the situation. Whereas the government is empowered to take action in all kinds of other crises, such as the BSE epidemic, or the collapse of PMPA and near collapse of AIB in the 1970s, it is, on the face of it, relatively powerless in the matter of compensation claims.

At the moment the amount paid out in such claims in Ireland (3% of GNP or about a billion pounds annually for personal injury claims) is causing serious problems, but it is not leading to social breakdown. Yet many people and organisations are concerned about the current trend. At a recent IBEC seminar the Minister of Defence, Mr Michael Smith, stated:

We have to strongly attack the compensation culture which is eating at the heart of our society and which has the potential to cause grievous harm to our economy. To put it very simply, if compensation is to be paid out to somebody for every one of life\'s little mishaps, the cost will eventually make the State economically uninhabitable. (Note 12)

In its recent report on the matter IBEC stated:

A claims culture exists in Ireland of such proportion that if it is not tackled, it will affect our competitiveness as a nation and impose a burden on tax payers, employers, consumers and the State vastly beyond that experienced in other EU countries and elsewhere. (Note 13)

Yet the fact is that if the claims culture does ever threaten the state with financial or social catastrophe, there is nobody, or no mechanism, to prevent this. There is no \'fail-safe\' mechanism.

For their part, judges do not see it as their business to take into account the wider impact on society of awards they make. Not only that, most of them would consider that the Constitution prohibits

them from considering the issue of the public interest in making such awards. A senior legal practitioner stated to Working Notes researchers:

The extent to which insurance company premiums may be increased as a result of the award or the extent to which the National Exchequer may be prejudiced when an award is made against the State is not a material consideration (in civil awards)... (Moreover) any legislation which impacted upon or hindered the citizen\'s right to enforce his constitutional right to seek a remedy in the courts for the preservation of, for instance, his right to bodily integrity would be unconstitutional.

A High Court judge writes:

The concept of the "common good" is not taken into account when adjudicating on civil actions for damages...there is no rule of law, or practice, which would entitle the judiciary to, as it were, discount or disallow a sustainable claim for damages by an innocent victim of a negligent act merely because the effect of the award would be to disadvantage a great many others, who were entirely blameless.

Thus the courts, who make the awards, are unable or unwilling to take responsibility for the wider social impact of claims.

On the other hand, the legislature (The Dail), who have a strong interest in keeping compensation costs under control, have no authority over the courts in this matter. The separation of powers is a central plank in the constitution of every modern democracy.

A number of determinations by Irish and other courts would suggest that the matter is not completely clear-cut, however, and these will be discussed in a later section.

The Case Against Considering the \'Common Good\'

Undoubtedly there are difficulties involved in attempting to include consideration of the \'common good\' in deciding on liability and damages in compensation cases. For one thing the notion of the \'common good\' is not very precise. It is difficult to assess the amount of harm that society would suffer as the result of a generous court award. But a greater concern of the judges seems to be the fact that a negligent person could be let \'off the hook\' because of a fear of possible consequences on the wider society. A judge writes:

Why should a plaintiff receive less than an assessment of just compensation for the wrong done to him? Who is to establish what the alleged "common good" is in a particular case? Why should a defendant and his indemnifier (usually an insurer or the State) be entitled to shelter behind a concept of "common good" so as to deny the claimant an amount of compensation assessed in accordance with just principles which are long established...

Justice O\'Flaherty wrote in a similar vein in 1993:

A person...has a legitimate interest in his personal safety and health which he cannot, in justice, be expected to sacrifice in his employer\'s interest or in that of some hypothetical greater good - "competitive industry" - where the harm has been wrongfully occasioned.(Note 14)

Another judge writes:

The question is, should innocent victims of a negligent act who are badly injured be sacrificed on the altar of what is perceived to be the "common good". Is it preferable that the rights and interests of an individual are subjugated to those of a large group? To be quite frank, I do not think so.

However plausible these statements seem, they still leave us with the major problem that the current system for vindicating the rights and interests of individuals is proving unsustainable.

It also seems anomalous that in cases where exemplary or punitive damages are awarded, the \'common good\' is often allowed as a consideration. These additional damages are awarded because of the conduct of the defendant, to signal that negligence does not pay. The social function of punitive damages has long been acknowledged in awarding punitive damages:

It cannot be lightly taken for granted that the only purpose of the law of tort is compensation or that there is something inappropriate in including a punitive element in civil damages or that the criminal law rather than the civil law is a better instrument for conveying social disaproval or for redressing a wrong to the social fabric…(Note 15)

Another writer highlights the common good function of the civil law:

Another possible theory of liability in tort is that the function of the law is to lay down certain standards of conduct which the community is expected to observe since without the observation of such standards civilised life could not be carried out satisfactorily. This might be termed the social purpose of the law of torts. (Note 16)

Possibilities for Change

The greatest possibilities for change may lie with the judges themselves, rather than with legislation. The \'compensation culture\' might be checked

- if judges were to employ, as IBEC has suggested, "a clearer and more transparent application of the rule of negligence and liability under common law".
- if judges were to give more weight to precedents where consideration of the \'common good\' or \'public interest\' has in fact played a part in decisions
- if judges were to follow the example of other countries in considering compensation claims as a matter of \'distributive justice\' rather than \'corrective justice\' (see below);
- if judges were to be more vigilant in weeding out fraudulent claims.

The Common Good in Relation to Negligence and the \'Duty of Care\'

An award of compensation for personal injuries requires that negligence be proved. In recent times the Irish courts have tended to broaden the scope of negligence, sometimes, one suspects, in order to award compensation in a really \'hard case\' where injuries are serious. As a result many ordinary

people fear they will be found negligent for consequences of actions which most people would regard as reasonable (for instance, allowing neighbours\' children to play in their garden).

\'Negligence\' was defined in an important British court case in 1856 as "the omission to do something which a reasonable person would do...[or]would not do". Since then a number of specific indicators have been identified in the courts to elaborate what is reasonable in particular circumstances. Two of these have \'common good\' dimensions, namely

(a) the social utility of the defendant\'s conduct; and

(b) the cost of eliminating the risk.

The application of these two indicators is implicit in several significant cases:

In the case of Hay v. O\'Grady (Supreme Court, 1992) the plaintiff was a \'house parent\' in a house run by a mental hospital for the purpose of helping patients to re-integrate themselves into the community. The plaintiff was assaulted by a patient in the hospital who had been transferred to the house. A claim for negligence against the hospital was denied. Justice McCarthy stated:

I am satisfied that there was no fault or blame whatsoever so far as the plaintiff is concerned...The scheme [of placement in a house]...is obviously a very good scheme and, I think, it accords with state policy that those fit for community living should not, as far as possible, be locked away in large institutions for the rest of their lives. It is inevitable that there would be some failure with these clients... (Italics added).

In the case of Mulcare v. Southern Health Board (High Court 1988) the plaintiff was employed by the Health Board as a home help, and injured herself in a fall while visiting an elderly person. Her claim for damages, on the grounds that the Health Board had a duty to ensure that the house being visited was safe, was denied. Justice Murphy stated:

I think that all that can be done is to simply state that the employer is bound to exercise reasonable care...

Is one to say that a reasonable employer must say to the owner of the premises, \'My man will not go in there until certain works are done\'. I take the view that a Health Board is not bound by a duty...to require the premises...to be improved to modern standards.

The principles enunciated or implicit in these cases could be applied in many other areas, particularly in relation to the supposed \'duty of care\' of Local Authorities.

The Constitution contains the important proviso that the State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizens. Implicit in the Mulcare v. Southern Health Board case is the view that it would not be practicable to insist that the homes of all elderly people be brought up to modern standards before they could be visited by Health Board workers.

The \'Common Good\' in Relation to Establishing Liability and the Level of Damages

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In spite of what judges have said, regarding liability and damages, the \'common good\' appears to have been taken into account in various relevant legal enactments, in evolutions in practice, and in court decisions. The following are some relevant examples:

There have been a number of claims in the courts seeking compensation for trauma suffered through the negligence of a third party (for example, trauma suffered by a child through witnessing a motor accident). The Irish courts tend to put limits on these claims. The limitations appear to be imposed for policy rather than legal reasons, the argument being that "you can\'t have everybody who saw the accident making a claim". This policy also seems to have operated in the case of claims arising from the Hillsborough disaster.

There is a long established principle in Irish law enunciated by the Supreme Court whereby compensation for pain, suffering and major permanent disablement is capped and presently may not exceed £280,000. Presumably there is a public interest dimension to this limit.

The public interest was specifically cited in the case of Sinnott v. Quinnsworth and others (Supreme Court, 1984) where damages of almost £1.5m. awarded to a passenger in a car were reduced on appeal. Chief Justice O\'Higgins stated in the course of his judgement:

Since money cannot possibly compensate [for quadriplegia], a jury may question whether it matters what sum is awarded...the answer must be that it does matter. It matters to the defendant or his indemnifiers, and would be a ground for legitimate complaint if the sum awarded were so high as to constitute a punishment...rather than...an attempt to compensate the injured. It also matters to contemporary society if, by reason of the amount decided upon and the example which it sets for other determinations of damages by juries, the operation of public policy would be thereby endangered. (Italics added).

It is important to note however that what was at issue in this appeal is whether the amount of damages was reasonable in terms of the actual needs of the claimants. The issue was not the ability of the defendant to pay or the costs to industry.

Corrective v.Distributive Justice

In the current system the theory is that damages are awarded primarily on the basis of the loss or injury rather than on the basis of the fault of the defendant. The aim of compensatory damages is to put the injured person in the same position as if the injury had not occurred. However in practice it appears that Irish courts operate a system that adds to this. Perhaps the observation by JM Kelly is correct when he argues that the real purpose of damages is " to put the plaintiff in possession of a sum of money which in the court\'s judgement ought to be enough to satisfy his vindictive feelings against the wrongdoer". (Note 17)

At this point, an important distinction between two concepts, \'corrective\' justice and \'distributive\' justice, ought to be made. In the \'corrective\' view John is bound to make payment or restitution to Peter if, but only if, John\'s conduct can be considered irresponsible or blameworthy. In this view the main question asked is, "What should be the extent of liability of John." This approach is the

one that currently dominates the compensation awards system. The emphasis on the liability of the wrongdoer has the effect of distorting the purpose of compensation and the focus becomes, as Kelly suggests, \'putting the plaintiff in possession of a sum of money\' rather than putting him in the position he was in prior to the accident. (Note 18)

There is another view which sees the proper function of the law in regard to compensation for personal injuries as \'distributive\'. In this view the question to be asked is not whether John is to blame, but, \'How should the risks of common life be apportioned, especially the risks of collaborative exercises?

A good example of this is travel by road. Because of the sheer volume of traffic no one who uses a car can hope to go through life without having an accident of some kind. A moment\'s inattention, or even bad luck, such as a wasp in the car, can result in an accident. Depending on one\'s luck the consequences of such events may be very slight or they may be horrendous. Leaving to one side the matter of criminal carelessness, the cost of damages is best shared among all those who participate in the \'shared enterprise\' of car driving. The question whether the injury was caused by any fault becomes substantially irrelevant. In theory this is how the insurance system should work, and in some extent does work. Car owners do not have to pay for huge damages out of their own pocket.

However the concept of \'blame\' still figures very highly in the court system, even to the extent that the \'common good\' principle underlining motor insurance has been undermined. Awards are much higher than they would be if the object of the system was merely to put right the damage (such as \'whiplash\' or dented wing). Because of this the cost of insurance is much higher than it would be if damages were considered only within a \'distributive\' framework. In the \'corrective\' framework, the injured gain, but everybody else suffers through higher premiums.

Perhaps a more important point is that a legal scheme for securing \'distributive\' justice tries to compensate all who suffer injury in the course of common life, whereas \'corrective\' justice only seeks to compensate only those who have been injured by the fault of someone else. Because our system is still largely \'corrective\', it then becomes important to assign blame if compensation is to be awarded. As a society we become more focused on finding some one to blame rather on the fact that people suffer injuries.

Yet in the case of badly injured people the Irish courts sometimes appear to follow the \'distributive\' model, when they give large awards even where negligence seems slight, thus securing a kind of general insurance (as in the case of McNamara v. E.S.B, where a small boy climbed a pylon). In such cases the courts focus on the extent of the injury. In less serious cases the courts seem to adopt the \'corrective\' model and focus more on negligence. This can result in hefty awards to the slightly injured because the assignment of \'blame\' adds a premium to an award. Of course, to add to this, establishing blame is a very expensive procedure because of high legal fees, and thus the \'corrective\' framework is much more costly for everyone (except the solicitors involved) than a \'distributive\' framework would be.

It would not seem unconstitutional if judges were to tend more towards the \'distributive\' model and this would make a significant impact on both the scope of liability and the level of damages, particularly the latter. More radically, if the \'distributive\' model were to work well, legislators would need to put in place a system of \'first party insurance\', perhaps paid for out of taxation. This would be in effect set up a Public Fund, from which compensation for injuries, especially catastrophic ones, could be paid.

Fraudulent Claims

Given the relatively high level of court awards, and the small expense of going to court under the \'No Win, No Fee\' arrangement, there has inevitably been a steady increase in fraudulent and opportunistic claims.

The judges themselves are concerned with the increase in this kind of claims. One judge writes:

There is the more serious issue of fraudulent claims. There would appear to be an increase in smallish bogus accident claims particularly against local authorities arising out of alleged defects in pathways or manhole covers etc. The only answer is for the Courts and Judges to be vigilant in weeding out the spurious claims and in not imposing an excessive duty of care on occupiers, employers etc. I think that most Judges are in fact alert to this problem.

The judges can however be helped in this task, through appropriate legislation, and through greater use of information technology.

The Role of the Legislature

Although the role of the legislature in responding to the claims culture is limited by constitutional considerations, there have been a number of legislative measures that have tended to limit damages in civil suits:

The Civil Liability Act 1961 made provision for damages for mental distress, but limited the amount to £1000, subsequently increased to £20,000. The limitation in this case is clearly considered to be in the public interest, and could be considered unfair to individuals in some cases, but it has never been subject to a constitutional challenge. The Garda Compensation Act 1941 is a long established example of an Act of the Oireachtas that outlines the manner in which compensation for injury will be awarded. Gardai injured in the course of duty pursue compensation through the scheme established by the Act in a manner that differs substantially from other cases of personal injury.

The principle here is that the Constitution guarantees to vindicate the rights of citizens, but does not state that this must be done initially through the courts. Similar legislation could be applied to other groups and situations. Of particular related interest is the fact that although the courts in Byrne v. Ireland decided that the State may be liable for wrongs, they did not lay down how such wrongs might be remedied. No statute was ever enacted regulating how cases against the State might be brought.

Many more suggestions have been made regarding possible initiatives by the legislature. The following suggestions appear (among others) in the IBEC Report:

A sanction could be introduced to discourage people from making false claims. If personal injury claims had to be support by a written affidavit, this would prevent people from making \'paper claims\' without exposing themselves to the criminal sanction of perjury.

There could be stricter control on advertising and on \'soliciting\' by solicitors. The bill currently before the Oireachtas is expected to make some impact in this area, if it is not subjected to a successful Constitutional challenge.

Solicitors taking a case should be required to put up a bond, so that recovery of costs by a successful defendant would be guaranteed.

Claims for \'patent\' personal injury should be required to be submitted within 6 months (not three years as at present) with the onus of proof that unreported accidents actually did occur resting with the plaintiff.

It has been pointed out, by IBEC, judges and others, that the huge legal expenses involved in claims against the state would be reduced, (without reducing the level of damages paid to victims) if the government made more use of Compensation Boards or Tribunals.

Conclusion

It is the view of some lawyers that the main problem with the \'compo culture\' does not lie with the large claims where people are compensated for catastrophic injuries (whether or not negligence of a third party is convincingly established). Some judges consider in fact that the \'cap\' of £280,000 for general damages of this type is too low. It is suggested that the problem rather lies with the multiplicity of small claims that are opportunistic or frivolous and are mostly settled out of court.

However even if the incidence of small fraudulent or frivolous claims is reduced, the problem of bigger, repetitive claims (such as the army deafness claims) still remains and does not seem to admit of any easy solution. The question here is: even if claims are shown to be justified, and some degree of negligence shown, can society actually afford to pay? The courts do not ask this question, and the legislature would seem to be precluded by the Constitution from making any intervention, no matter what financial or other catastrophe is threatened as a result of compensation payments.

One practical way in which the judges could address the problem would be the setting up of a forum, possibly under the aegis of the Bar Council, where judges could meet to discuss the wider issues arising out of the operation of the Courts. There would be no obligation on judges to attend such a forum, nor to follow any \'guidelines\' (which the forum in any case would not be entitled to lay down). But such a forum would provide an opportunity to discuss various problems, including ones connected with the separation of powers and the \'common good\'.

At the end of the day it is mainly up to the judges to take responsibility for the problems of the claims culture. Modern democracies give judges considerable power and a great degree of

discretion in making decisions. While they are bound to uphold the law and the constitution, they also interpret them and ensure that they serve justice and the common good. This is clear from the judgement of Justice Walsh in McGee v. the Attorney General (1974) where he stated that

"justice is not subordinate to the law...the people gave themselves time."the Constitution to promote the common good...the judges must..as best they can from their training and experience interpret these rights [laid down in the Constitution] in accordance with their ideas of prudence, justice and charity...no interpretation of the Constitution is intended to be final for all time.

Notes

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1. Reaction of Law Society to IBEC Report, \'Personal Injury Compensation as it affects Irish Business, the State and the Public. Dublin: Irish Business and Employers Confederation. 1999 (IBEC Report), as reported in the Irish Times, June 1, 1999.

2. Data from: Study by UK solicitors, Davies, Arnold, Cooper, quoted in IBEC report; IBEC Report, pp.9-11; Irish Insurance Federation Factfile 1997, pp.17.

3. IBEC Report, 1999, p.9.

4. IBEC Report, 1999, p.11.

5. The New York Times, June 7, 1999.

6. An approximate figure calculated from pp.17 & 21 of the Irish Insurance Federation FactFile 1997 and the Census of Population.

7. In the Foreword to Dr John White\'s, Civil Liability for Industrial Accidents, 1993.

8. Working Notes received a number of written replies in response to a letter sent to judges asking (1) Whether the \'common good\' was taken into account in making awards of compensation for personal injuries; and (2) If not, whether there was case for taking the \'common good\' into account. Information was sought and given on the condition that quotations would not be attributed.

9. Irish Insurance Federation FactFile, 1997, p.16.

10. Quoted in the IBEC Report 1999, p.20.

11. Ibid., p.44.

12. Ibid, p.20.

13. Ibid., p.12.

14. In Forword to John White\'s, Civil Liability for Industrial Accident, 1993.

15. Lord Wilberforce in the English case of Cassell & Co. v. Broome, noted in Consultation Paper on Aggravated Damages. Law Reform Commission, April 1998

16. Fridman, \'Punitive Damages in Tort\' (1970) 48 Canadian Bar Review, 48, 1970, p.373.

17. J.M. Kelly, \'The Inner Nature of the Tort Action\', Irish Jurist, 1987, p.279.

18. Much of this section is based on John Finnis, Natural Law and Natural Rights, Oxford: Clarendon Press. 1980, pp.179-183. We are indebted to Pat Riordan SJ for drawing our attention to this material.

Twenty-Five Years of Homelessness

Peter McVerry

June 1999

Then and Now

In 1974, I went to live and work in Summerhill, in Dublin\'s Inner City. In those days there was no such category as \'homeless children\'. There were a few children who frequently did not return home at night or who returned home only in the early hours of the morning, but they were so few in number that they did not constitute a separate problem category.

I think there are three reasons for that:

At that time, the sense of community was stronger and the extended family often lived in close proximity to each other. So a young person who was unable or unwilling to live at home frequently stayed with relatives or with neighbours in an informal sort of arrangement. Today, the extended family is scattered; a family in Ballymun might have their relatives living in Tallaght or Blanchardstown and the children rarely have contact with them. Going to live with relatives, in a totally different part of the city, is not a ready option. With the breakdown of community, a welcoming neighbour may not be an option either.

Secondly, the stresses on families today are much greater than they were twenty five years ago. For much of the last two decades, job insecurity and unemployment created pressures in families that some of them were unable to cope with. While this has eased in the past few years, there remains a stubborn, significant residue of long-term unemployed with few skills, which the modern economy is finding very difficult to assimilate. The pressures on children to succeed in school, the pressures from peer groups, and the opportunities for destructive behaviour, or escape routes such as drugs, are so much greater than in the past.

Thirdly the closure of major institutions, such as Daingean, Letterfrack, Scoile Ard Mhuire in Lusk, and in later years Madonna House, left many children, who would otherwise have ended up in one of these institutions, with no service at all. While we are now more aware of the sometimes appalling cruelty which was inflicted on children in these institutions and no one bemoans their passing, there was no attempt to replace the lost beds in smaller, more appropriate, child-centred units.

Changing Patterns of Homelessness

In the intervening twenty-five years, three changes in the problem of homeless children have been evident:

Firstly, it is clear that the numbers of homeless children have increased enormously. In spite of this, we have no firm data for the numbers of homeless children in the country. In Dublin, the Eastern Health Board Out-of-Hours service could provide some approximate indication of the numbers who are homeless over a period of time, but these figures are more closely guarded than the Ansbacher accounts. At a conservative estimate, no one will dispute a figure of some 400 children becoming homeless in the Dublin area each year. No one will dispute that the age of homeless children is getting younger and younger. The last published figures appeared in the Irish Times in the summer of 1997 (leading to a witch hunt within the Eastern Health Board as to how the figures got out!).

In 1996, there were 3,161 referrals to the Out-of-Hour service (some of these would be referrals of the same people). In the first six months of 1997, there were 1,599 referrals, of whom two-thirds were unable to be given accommodation. In June 1997, there were 300 referrals, an increase of almost 40% on June 1996. On average, 14 children were presenting each night, seeking accommodation (while only 8 beds were available), with as many as 17 on some nights.

The situation may have changed substantially since then, as fewer children are presenting to the Out-of-Hours service, according to the E.H.B. But, in the absence of any statistics or analysis as to why there are fewer referrals, no conclusions can be drawn.

The problem of collecting accurate figures for homelessness is increased by the ease of access which young people have to the boat for London or Manchester. Many homeless young people, particularly those from smaller cities and towns, believe, sometimes correctly, that accommodation, financial and drug treatment services in London, and other English cities with a large Irish community, are much easier to access than in Ireland.

Secondly, the number of homeless girls has increased. Up to four or five years ago, the number of homeless girls was small in comparison with boys. Today, the figure is 50% of the total. This has not been matched by a corresponding increase in accommodation for girls. There are only two hostels for girls (along with two mixed hostels) as against about twelve hostels for boys. Because the options for girls are so limited, many girls find the hostels available unsuited to their needs and are reluctant to go to them.

Thirdly, the reason for young people becoming homeless has changed. Twenty-five years ago, young people who did not live at home almost invariably came from very dysfunctional families - families with alcohol problems, parents who didn\'t care, parents who were heavily involved in crime and who involved their children in crime. Today, such dysfunctional families are still a cause of homelessness but, increasingly, homeless children come from families where the parent(s) are caring, worried and concerned. Something has happened in the relationship between the parents and the child. This relationship begins to break down, perhaps in the difficult adolescent years when the child acts up and the parents are unable to understand or cope with what is normal adolescent rebellious behaviour. If not dealt with at an early stage in the crisis, this deterioration can continue to develop and eventually result in homelessness. In many such cases, there is no blame attached to the parents; they are doing their best, are just as worried about what is happening as the child may be, but are unable, with their own resources, to remedy the situation. This change is important to

record, as there is a stigma attached to being the parents of a homeless child: they are considered to be \'bad\' parents, uncaring, often alcoholic, not interested in their child\'s welfare. In many cases this is simply not true.

Changes in the Provision of Care

The introduction of the Child Care Act in 1991 is perhaps the single biggest improvement in the situation of homeless children. This act obliges the Health Boards to provide care and accommodation for all homeless children in their areas. It also extends the responsibility of the Health Boards to provide for young people up to the age of 18 years, rather than up to 16 which was the upper age limit prior to this. This Act was an attempt to update existing legislation in relation to children which until then was governed by the 1908 Children\'s Act and was hopelessly out of date. In Britain, this 1908 Act has been updated at least a dozen times in the past twenty or thirty years. It is a measure of the small importance which we attach to children that it was not until 1991 (over twenty years since a Government commissioned report recommended it) that our first attempt to update the legislation took place. Another Act, The Children\'s Bill, intended to update the sections of the 1908 Act in relation to young people and the criminal law, is still not even in sight! Ironically, however, while homeless children now have a right in law to accommodation and care, there have never been more homeless children living on the streets. There are several reasons for this contradiction.

Although the responsibility for homeless children was imposed by law on the Health Boards, they were not given the resources to adequately implement the law. Hence the past few years have seen many lawyers getting rich as a succession of children went to the High Court to get their rights acknowledged. Last year, some £2 million in legal fees was spent by the Dept. of Health in defending such High Court cases. Almost invariably, the State still lost the case! The Health Boards did not have sufficient accommodation available to them, nor the resources to provide more. What they had was hopelessly inadequate for the numbers of homeless children looking for somewhere to stay. There was a particular problem with the 16 and 17 year olds, as these age groups were a new responsibility for the Health Boards and services for them were almost non-existent. Although there has been an increase in the level of services in recent years, the available suitable accommodation still does not meet the demand. The 16 and 17 year olds are still badly served, as the Health Boards, in allocating scarce resources, naturally give priority to younger children. Of course media publicity about a 13 year old living on the streets is more embarrassing to the Health Boards than a 17 year old so doing.

A further problem was revealed even before the Child Care Act was signed into law in 1994. A number of homeless children, even when offered accommodation, ran away and refused to return to the hostel. These children were often very damaged, unused to structures or limits, and found the hostel regime too demanding. In the High Court, the Health Board argued, with good reason, that they could not provide a service for these children if they would not stay long enough to avail of the service provided. In effect, in order to help these children, they would need to be detained against their will and the Health Boards did not have the power to detain them. In other words, the Health

Boards argued, correctly, that while they had the legal responsibility to provide care and accommodation for these children, they did not have the powers to fulfil this responsibility.

To correct this anomaly, the High Court ordered the Health Boards to provide what are called \'High Support Units\', in effect detention centres for homeless children who have not been committed by the courts for criminal offences, and to which children could only be sent by the High Court, for their own welfare. While there are two small \'High Support Units\' in existence at present, it will not be until the year 2002 that a further 48 beds, which is the current estimate of the extent of the problem, will be available. In the meantime, these children more or less fend for themselves. In the past twelve months, three children have been sent to prison for their own safety and welfare, without having committed any offence, and one such child was being considered for the Central Mental Hospital, because no suitable accommodation was available. An amendment to the Child Care Act to remedy this anomaly and allow the Health Boards to send children to \'High Support Units\' without the expensive recourse to the High Court, is currently being considered. The problem has been further complicated in recent years by the growing number of homeless children who have a serious drug problem and who cannot be accommodated in hostels which have neither the resources not the training to deal with drug-related issues.

The Lack of Co-ordination

In the response to homelessness among young people, a lack of co-ordination exists on many fronts.

The lack of co-ordination between hostels, almost all of which are run by religious or voluntary organisations, makes the allocation of suitable accommodation particularly difficult. Different hostels have different criteria for admission: some admit only 12 to 16 year olds, some admit only 14 to 18 year olds, some admit only 16 to 17 year olds, some require all the young people to be in full-time education, some require them to be in employment or training courses, some require them to be completely drug-free. For the harassed social worker, trying to search out a place for a homeless child, the field is very confusing. Having found what she thinks is the suitable location, she frequently finds that there are no places available!

The division of responsibility for children in general between the Departments of Health, Education and Justice has also ensured that children did not get the service they required. For example, a homeless child might commit some petty offence and appear in the Children\'s Court. The Judge, concerned at where the young person would live if released on bail, would frequently request their social worker to attend. The social worker, on legal advice, would refuse to assist the court on the grounds that the court should only be concerned with the criminal offence before it and that its responsibility was confined to the determination of guilt or innocence and if guilty, imposing an appropriate penalty. The question of where the child would live was not its responsibility. In this case, the court was powerless to proceed further with the question of the child\'s welfare, as technically the social worker was correct. Frequently, the child was remanded in custody as the only alternative available to the streets and, if eventually found guilty, the court often refused to make any order, in sheer exasperation at its inability to deal adequately with the welfare of the child, and the child would be released back to the streets. In this case, the child becomes the responsibility of

three different government departments all in the one day, that of the Dept. of Education in the detention centre; that of the Dept. of Justice on being brought to the Children\'s Court; that of the Dept. of Health on being released by the Court in the afternoon onto the streets. In one memorable High Court case, I actually observed and overheard officials from the Departments Of Health and Education fighting over which of their respective departments had responsibility for the child in question.

The failure of the Health Boards to adequately provide for homeless children has led to their criminalisation. One of the first children I dealt with, who was living on the streets and involved in prostitution, appeared in the Children\'s Court charged with criminal damage to a post box. damage to the value of £2 Normally, the charge would have been dismissed under the Probation Act. However, because the child was at risk, he was remanded in custody for his own protection. Eventually, the child was sentenced to two years in Trinity House, a detention centre of children under 16, as it was clear that any other decision was going to leave him on the streets and at risk. This involvement of the criminal justice system to safeguard homeless children has been a necessary but unfortunate development. A former director of Trinity House has stated that one third of the children detained there were effectively homeless children who should not be there.

Related to this problem of the division of responsibility is the problem in relation to a child reaching the age of 18. The Health Boards have responsibility for young people up to the age of 18; after that, their accommodation becomes the responsibility of the Local Authority. In fairness to the Health Boards, they do not discard young people on their 18th birthday; it is now recognised that few young people are ready to live independently at the age of 18 and many hostels would keep young people until they are 19, 20 or even longer. The problem arises where a young person has not secured a long-term placement by the time they reach 18 years, or if they leave the placement they already have secured. In these cases, the Out-of-Hours service is no longer available to them, social workers no longer have an obligation to work with them (although some will). These young people are then dependent on the adult homeless services, which are totally inappropriate for a young person of 18 years. So a young person on 10th June can get accommodation through the Out-of-Hours service in a hostel with other young people of his age; on 11th June, having turned 18 years of age, they have to take their chances in an adult hostel. But their need for support and care and security remain the same as the day before! This transition to a whole different set of structures is very confusing and upsetting for young people. The young people, whom this affects most, are frequently the more damaged and difficult young people who were unable to secure a long-term placement before their 18th birthday.

The Emergency Service

Another major development, already alluded to, that took place in the Dublin area, was the provision of an overnight social work service (called the Out-of-Hours service) for homeless children. This arose from the frustration of voluntary bodies who would encounter homeless children after the social workers had gone home in the evening, or at weekends, and were powerless to help them. Voluntary bodies did not have the resources to go out to the family of the children to

discuss the child\'s situation and did not have the right to place a child in accommodation if the parents, no matter how unreasonably, refused to allow the child to be so placed. The provision of an overnight and weekend service for homeless children was an issue that was heatedly discussed in a series of meetings between the Eastern Health Board and the voluntary bodies, which were organised by the then Minister of State at the Department of Health, Chris Flood. (These valuable meetings have long since been abandoned!). As a result of these meetings, the Minister ordered the Eastern Health Board to provide such a service, which did not endear him to the Health Board!

Children who find themselves on the streets, after hours, with no place to go can go to any Garda Station after 8pm and ask the Gardai to phone the social worker who is on duty until 5am the next morning. The social worker will interview the child, and if possible visit the parents to assess the situation. If the child cannot return home, then in theory the social worker will bring them to a hostel where a bed will be available for the night. The following morning at 10am they will leave the hostel where they had spent the night and see their own social worker who will provide them with more permanent accommodation.

However, there are a number of difficulties with this service:

Many homeless children will not go near a Garda Station. Many have already had bad experiences of the gardai and would be unwilling to approach a garda for help. These children would prefer to sleep rough than to go to a garda station. While the issue of security for the social worker on duty is an important one, nevertheless the refusal of the service to consider any other option beside a garda station is a serious obstacle for children. Focus Point, or one of the existing hostels, would provide adequate protection for a social worker and would be a more comfortable and attractive place for homeless children to wait.

Sometimes, a homeless child who goes to a garda station has a bad experience. I am personally aware of Gardai who have told a young child that they will have to wait outside the Garda Station, even though it was bitterly cold and raining. If there are a lot of calls on the social worker before this particular child phoned in, the child could be waiting for three or four hours for the social worker to get around to their case. In other cases, the Garda on duty at 8pm has told the child to come back at 10pm. The Garda shift changes at 10pm and the garda on duty simply didn\'t want the bother of looking after the child. But the children now know that there is often little point in coming back at 10pm as the beds available will be all filled by then. In other cases, the gardai may already have had ten or twelve children calling to the garda station and they are pretty fed up "baby-sitting", so their patience has run out and they can be, understandably, a little testy. However, such experiences ensure that the child is unlikely to return another night. It must be stated, however, that many of the Gardai are sympathetic and more than willing to help.

There are only eight beds available to the social worker on duty. In the past, there may have been 16 to 20 children looking for a bed for the night. After the beds have been filled, the social worker can only tell the child to sleep in the garda station for the night (if the gardai allow them) or to sleep on the streets. A child who goes to the garda station two or three nights in a row and is told each night that the beds are all filled is not going to go back again to look for a bed. This is the most worrying

aspect of the problem, that some homeless children simply go underground and have given up seeking a bed because they so frequently fail to get one.

Because there are long waiting lists for places in long-term hostels, a homeless child may have to seek a bed from the emergency service for months on end. This means each night going to the Garda Station at 8pm, waiting often for hours for the social worker wondering if a bed will be available, and if so, leaving the hostel next morning at 10am. During the day, they must walk the streets with nothing to do and they receive £35 per week to provide all their meals, bus-fares, and other needs. This may continue for months until a place becomes available.

While the idea of an emergency service at night and weekends is an excellent initiative, the way in which the present service is structured is guaranteed to put children off. It ensures that the numbers of children presenting themselves as homeless is significantly less than the number who are actually homeless. And outside Dublin, there is no emergency after hours service at all.

Towards a Solution

A recent major development has been the establishment of a Forum for youth homelessness, involving all the relevant statutory bodies and many of the voluntary bodies and consulting widely with service providers and homeless young people themselves. The purpose of this Forum is to produce a report, which will identify the main issues in the area of homeless children and make recommendations, which it is hoped the relevant statutory bodies will accept and implement, and which the relevant voluntary bodies will agree to. This Forum is due to present its final report by Christmas 1999. In the meantime the following observations may be of relevance.

Homelessness is not an event which happens on a certain day or month; it is a process that may span many years. The process begins with difficulties in relationships within the family; these escalate until the situation becomes intolerable for either the parents or the child; the child may begin a pattern of leaving home for a while and then returning. This \'in and out\' pattern may continue for several years until eventually the child leaves home and decides not to return. Intervention at any stage in the process may well prevent the final outcome.

Hence the following stages are involved in dealing with the problem:

1. Early intervention:
2. Assessment of child\'s situation
3. Placement in a residential or foster care situation.

1. Early intervention: A range of preventative services are required, particularly in deprived areas, which can intervene and support families at the early signs of difficulties occurring. These services could include family therapy, parent support groups, counselling, crèches, pre-school programmes etc. The objective is to provide support and professional help as early as possible and to make such programmes readily available to all who wish to use them, with minimum waiting lists. The Health Boards recognise the importance of such programmes in reducing the incidence of homelessness in the future but, being financially constrained, are often placed in the dilemma of having to choose

between providing residential accommodation for young people currently on the streets, or abandoning those children in order to provide preventative services which would reduce homelessness in the future.

2. Assessment of child\'s situation: If early intervention fails, and the child runs away from home or is put out of the home, then an assessment of the child\'s situation and future options has to be done. This will probably require short term accommodation where the young person can live while the assessment is being carried out. This short-term accommodation could be in a residential hostel, in short-term foster care or with emergency carers. This should normally not require more than a couple of days and involves talking to the child, the family and perhaps other agencies that have been involved with the family. The outcome of the assessment is a decision that the child return home, be placed in foster care or residential care or be placed with the extended family.

3. Long-term placement: If the situation at home is such that it is not desirable or feasible for the child to return home, then the child must be placed somewhere else. Normally, if a suitable place is available with one of the extended family, then that option would be preferable. Failing that, the child will either be placed in long-term foster care or residential care where he/she can live until they are able to live independently.

Conclusion

In the ideal world, each family would have ready access to a range of preventative programmes that would support and help the family to deal with difficulties that arise. If these are unable to prevent the crisis which results in the child leaving home, then the child should normally be able to continue living in the area in which he/she has grown up, where their friends live, where they go to school and where their support structure exists. Most homeless children come from a limited number of Local Authority areas, where incomes may be low, unemployment high and support services overstretched and few in number, as for example in Dublin, Tallaght, Clondalkin, Blanchardstown, Inner City, Ballymun. At present, in almost all these areas, accommodation for homeless children is non-existent or inadequate and children have to migrate to the city centre in order to find accommodation and support. This uproots these young people from whatever support structures existed for them in their area of residence and leads them into an undesirable sub-culture in which crime, drugs and prostitution pose serious risks for them. Thus in each of these Local Authority areas, a reception area and short-term accommodation needs to be provided, where assessment can be carried out, and long-term accommodation provided if required. This involves both the provision of residential care in small units in the area and the use of local families as foster carers. In larger areas, such as Tallaght, a substantial number of residential units might be required.

The provision of such a range of services is a long-term objective; they cannot be provided overnight. So how do we get from here to there? I believe that we need to define what is not acceptable in relation to homeless children, a bottom line as it were, and seek to eliminate that in the first instance. What is not acceptable today is that children should have to live on the streets. A night shelter, which would be open to all young people who require it and wish to use it, within a short distance of the city centre should be opened immediately. A night shelter is not the answer to a

homeless child\'s problem, as it does not address their many other needs. But it meets the most basic needs, somewhere to sleep and something to eat. Following that, the \'bottom line\' can be moved up and other issues tackled, such as the fact that homeless children have nothing to do all day, that some need long-term care and accommodation, and finally that they need it in their own area.

While the provision of adequate services for homeless children is a complex and detailed problem, there are many obvious improvements which could be made, if the political will were present.